

**AN ORDINANCE
BY ZONING COMMITTEE**

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**AN ORDINANCE TO AMEND SECTION 16-28.023 OF THE CITY OF
ATLANTA ZONING CODE CONCERNING THE TRANSFER OF
DEVELOPMENT RIGHTS; AND FOR OTHER PURPOSES**

WHEREAS, O.C.G.A. § 36-66A-1 *et seq* allow municipalities to approve the transfer of development rights calculated and allocated in zoning ordinances by the enactment of an ordinances providing that such transfers are for the purpose of conserving and promoting the public health, safety and general welfare; and

WHEREAS, the City of Atlanta had enacted an ordinance which predated the passage of said state law setting forth conditions for the transfer of development rights under its Zoning Code; and

WHEREAS, the current state law now requires that certain amendments be made to the City's ordinance regarding the transfer of development rights prior to any future transfers; and

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens and the City of Atlanta to amend its present ordinance pertaining to the transfer of development rights to conform to the specific requirement of state law so that property owners may transfer such rights for the purposes of conserving and promoting the public health, safety and general welfare and preserving natural, environmental, historical and cultural resources;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1. That Section 16-28.023 of the City of Atlanta Zoning Code is amended by deleting the present language in its entirety and inserting in its place the following:

Sec. 16-28.023. Transfer of development rights.

(1) Intent

For the purposes of conserving and promoting the public health, safety and general welfare and preserving natural, environmental, historical and cultural resources, this

ordinance allows and controls the severance of development rights from a sending property and the transfer of development rights to a receiving property.

(2) Definitions.

(a) *Development rights*: calculated units of development factors that would be allowed on the buildable area of the sending property under its present zoning category disregarding any variance or non-conformity that may presently allow a greater number of development units.

(b) *Development factors*: quantified units of transferable development rights that may be severed from a sending property or directly transferred to a receiving property. Density as expressed by floor area ratio; total open space; and usable open space, available to the sending property but which remain unused at the time that the sending property will be dedicated are the only development factors that may be severed from a sending property or transferred to a receiving property.

(c) *Sending area*: an area consisting of one or more parcels or lots which can qualify to be a sending property. A sending area may be (1) an area consisting of one or more than one parcel or lot, if contiguous, which is zoned in any category R-1 through R-5 on one portion of the parcel(s) or lot(s) and also zoned RG on another portion of the same parcel(s) or lot(s), provided however that such property must be used for single family or two family residential purposes and no other use is allowed by any special permit. Such areas may be also be referred to as residential sending areas; (2) the boundaries of any property designated as a Landmark Building or Site or Historic Building or Site pursuant to the City of Atlanta Historic Preservation Ordinance; (3) one or more lots or parcels that are suitable to be donated to and accepted by the city, and will be dedicated for use as greenspace by an instrument to be recorded in the office of county clerk in which the property is located or property that will be purchased by the city for use as greenspace.

(d) *Sending property*: a parcel or lot in a sending area or a parcel or lot with special characteristics including but not limited to: woodland; flood plain; natural habitats; wetlands; groundwater recharge area; marsh hammocks; recreation areas or parkland, including golf course areas; or land that has unique aesthetic, architectural, or historic value that is found by the governing body to be deserving of protection from future development and which will be dedicated to that use when the development rights are severed or directly transferred to a sending property.

(e) *Receiving area*: Any area zoned with a classification that allows multi-family residential uses or mixed use, provided that such mixed use has a residential component of at least 50%.

(f) *Receiving property*: a specific parcel or lot where development rights may be increased through the issuance of a special permit allowing the receipt of the calculated units of development factors defined in this subsection. The governing body shall determine appropriateness and suitability of a receiving property based on its determination that there are no substantially adverse, environmental, economic or social impact on the receiving property or on neighboring properties pursuant to the procedures set forth in this section. A receiving property shall be appropriate and suitable for the increased development allowed by the receipt of the additional development rights to be transferred and no receiving property may be developed in variance from the zoning district regulations in order to accommodate the use of transferable development rights, unless such variance is specifically shown on the site plan submitted with the special permit application.

(g) *Transfer of development rights*: the process by which development rights are severed from a sending property and affixed to one or more receiving properties.

(h) *Special permit for transferred development rights*: a special permit issued by the governing body after approval of an application as set forth in this section. A special permit application made pursuant to this section shall, in addition to the requirements set forth herein, meet the requirements for special permits set forth in Sec. 16-25.002(3).

(3) Sending Areas and Properties.

(a) *Residential Sending Areas*. The designation of a parcel or lot as a part of a residential sending area is not a declaration that the development rights are automatically severable or transferable. In order for any development rights to be severed or transferred the applicant must show that the future use to be made of the part of the sending property from which the development rights are severed or transferred meets the requirements of this section and Section 16-25.002(3). A residential sending area may only send development rights to another residential use. Individual contiguous properties in a sending area as defined in this section may apply under one special permit for the transfer of development rights.

(b) *Historic Preservation Designation for Individual Sending Properties*. Any property designated as a Landmark Building or Site or Historic Building or Site may, apply to sever or transfer the development rights not utilized by the present

development of the historic property. The historic nomination or designation is not a declaration that the development rights are automatically severable or transferable. In order for any development rights to be severed or transferred, the applicant must show that the future use of the property from which the development rights are severed or transferred meets the requirements of this section and Section 16-25.002(3). Approval of the severance or transfer of development rights shall not be a condition of approval of the historic designation, but no development rights shall be transferred until after the property is designated as a Landmark Building or Site or Historic Building or Site. Rights transferred from a designated building or site may be applied to any permitted use, which would be allowed on the designated property. Any redevelopment of the designated property from which the rights have been transferred or severed must be based on the remaining development rights and on the conditions under which the special permit was granted. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on future redevelopment of the designated property.

(c) *Greenspace Sending Areas or Properties.* Before property in a greenspace sending area may sever or transfer development rights, such transfer must be approved either in the same transaction as the purchase or dedication by approval of the application by the governing body or by separate application filed no later than ninety days after the transfer of the property to the city. In order to become a greenspace sending property, a parcel or lot must be the type of property, which would meet the definition set forth in O.C.G.A. § 36-22-2(3) (as amended). Any property purchased by the city for use as greenspace need not be acquired with funds made available from the Community Greenspace Trust Fund to be eligible as a greenspace sending property but in all purchases made by the city, the purchase price of the property must be reduced by the appraised value of any development rights which are severed or transferred.

(4) Receiving Areas and Properties.

(a) *Receiving Areas.* The designation of a parcel or lot as a part of a receiving area is not a declaration that development rights may be received by such parcel or lot. In order for any development rights to be received by a parcel or lot, the applicant must show that the future use to be made of the receiving property is in compliance with the terms of this section and Section 16-25.002(3). Contiguous individual parcels or lots which are being developed under common ownership may apply to receive development rights under a single application but shall indicate the manner in which the rights to be received are being allocated among the parcels.

(b) *Residential Receiving Properties.* A specific parcel in a receiving area, which is proposed for a multi-family use, or a parcel which is proposed for a mixed use with a residential component comprising more than fifty per-cent (50%) of the floor area of the development, is eligible to apply to become a receiving property.

(c) *Receiving Properties for Development Rights from Historic Designation.* Rights transferred from a Landmark Building or Site or Historic Building or Site may be applied to any permitted use, which would be allowed on the property from which the rights were transferred. The fact that such rights were transferred by a historic designation is not a declaration that the development rights may be received by a property. In order for any development rights to be received by a property, the applicant must show that the future use of the property meets the requirements of this section. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on redevelopment of any designated property through the use of transferred development rights.

(5) Application for TDR Special Permit.

(a) *Sending Area or Property:* Owners of properties in sending areas or properties with special characteristics that are to be designated, developed or used in a manner consistent with the stated intent of this ordinance may apply to the governing body for the severance or direct transfer of development rights in accord with the procedures listed in this section. Each such application shall contain the following:

(i) a description of the special characteristics of the property and an explanation of the manner in which those special characteristics advance and promote the intent of this ordinance.

(ii) a map and a legal description of the property from which the transfer is proposed.

(iii) an original and fully executed instrument to be recorded in the office of county clerk in which the property is located which states that current landowner and any person with an interest in the property, including without limitation any lienholders, consent to the prohibitions against future use of the property except in accordance with the conditions stated as the basis for the transfer of the development rights. Such instrument shall also state that such prohibitions shall be binding on the landowner or any other person with an interest in the property as of the date that the instrument is recorded and that

this instrument shall bind every successor in interest to the landowner or any other person with an interest in the property.

(iv) a calculation of the amount of quantified development factors that are proposed to be severed or transferred.

(v) a statement specifying whether the development rights are to be transferred to a receiving property or are to be held for future use. If the development rights are to be transferred to a receiving property under the same ordinance authorizing the severance of the development rights, the application shall be in the form of a joint application, which shall be considered by the governing body under the procedures set forth in this section referring to joint applications. If the development rights are to be severed and held by the owner of the sending property, the application shall include the form of a deed of transferable development rights which shall after approval of the transfer vest in the owner of the property and be deemed appurtenant to the sending body until the transferable development right is registered as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto.

(b) *Receiving Area or Property:* Owners of properties, in a receiving area or property eligible to receive development rights from designated historic properties, that seek to develop such property in a manner which requires density expressed as floor area ratio, total open space, or usable open space above that resulting from the calculations applied to the property sought to be developed under its present zoning, may apply to increase amount of such factors which may be applied to the property by application for special permit for the receipt of transferred development rights. Each application shall contain the following:

(i) an affidavit from the property owner consenting to the use of the transferred development rights and stating that all such rights sought to be utilized pursuant to the application are fully and unconditionally owned by the property owner. Such affidavit shall also acknowledge that the use of the transferable development rights necessary to complete the project shall, upon approval of the application, remain with the property for the life of the development and cannot be severed from the property or otherwise transferred without the property being declared a sending property pursuant to subsequent application.

(ii) a map and a legal description of the property to receive the transferred development rights.

(iii) a statement in the form of an affidavit from the property owner identifying the source of the transferable development rights to be used by the receiving property. Said statement shall detail the ownership of the transferable development rights to be used back to the transaction(s) that created such development rights and shall specify the amount that are to be applied to the receiving property.

(iv) a section which explains how the project meets the requirements for special permits set forth in Sec. 16-25.002(3) and assures future protection of public interest and achievement of public objectives to the same or a higher degree than would application of the zoning district regulations without approval of the application for receipt of the transferred development rights.

(v) a plan showing exact lot size, location and size of the buildings, structure or improvements to be placed on site; the specific use of each building, structure, property, or part thereof; detailed arrangement of required parking spaces, location and means of ingress and egress; and, unless waived by the director, bureau of planning, topographic information. The same detailed information shall be required where existing structures are to be used or retained under the terms of this chapter. Plans shall be prepared, signed and sealed by a registered architect, engineer, landscape architect, registered with the State of Georgia, or planners who hold membership in the American Planning Association, competent in the preparation of detailed and accurate plans, drawn to scale. Said persons shall indicate on their plan their state registration number and shall certify that they are familiar with the City of Atlanta Zoning Ordinance, including revisions, and that to the best of their ability, these plans are accurate and comply with the general and district regulations of the zoning ordinance if the application for receipt of the transferred development rights were approved.

(c) *Joint Application by Sending and Receiving Property:* The owners of sending or receiving properties or properties in sending and receiving areas may apply jointly to have the severance of development rights in a sending property and the transfer to a receiving property approved in the same action of the governing body. The joint application shall contain all of the information required by both types of applications and shall be acted on as one application.

(d) *Withdrawal or Denial of Applications:* An application concerning a TDR special permit, including any applications for amendments, may not be withdrawn after advertisement for the public hearing at which it was to be considered. No fee refunds shall be given for the withdrawal of any application. Substantially the same application shall not be considered within twenty-four (24) months from the date of withdrawal or denial.

(e) *No Transferable Development Rights Affected by Withdrawal or Denial of an Application.* If an application for the severance, transfer or receipt of development rights is withdrawn or denied, the development rights at issue in the permit retain the characteristics, which they had prior to the withdrawal or denial of the application.

(6) Processing of the Application.

The council, after conformance with the requirements established in this section and in conformance with the procedures and requirements so established in Chapter 27, "Amendments," may authorize the severance or transfer of development rights and the receipt of development rights under the special permits authorized in this section. Where a special permit for the receipt of development rights increases the development of a parcel in a manner that would otherwise be prohibited by the zoning district regulations, such development shall be allowed after approval of a special permit by the governing authority but only to the extent made necessary by the receipt of the development rights and in the manner specified in the special permit.

(7) Tracking of Ownership of Development Rights.

The Bureau of Planning is authorized and directed to develop a system for monitoring the severance, ownership, assignment and transfer of development rights. The records maintained by the Bureau of Planning shall be an official record of the City of Atlanta for purposes of the analysis of applications for the transfer of development rights.

(8) Purchase and Resale of Development Rights.

Development rights may be bought or sold by any person. It shall be the responsibility of private parties to such transaction to register the change in ownership with the Bureau of Planning within 30 days of the purchase. The failure of private entities to register the change in ownership resulting in applications, which differ from the records of the city shall be cause for denial of the application.

(9) Purchase of Development Rights by the City.

The city is authorized to purchase development rights in the same manner as any other interest in real property and may hold the development rights for conservation purposes or for resale.

(10) Transferred Development Rights to Remain with the Receiving Property; Severance of Unused TDR's After Completion of Development

After the use of transferred development rights are approved for a receiving property by a TDR special permit, the transferred development rights are appurtenant to the property and may be transferred as a part of any future sale of the property without further approval of the city, provided however that neither the use nor site plan approved as part of the TDR special permit allowing receipt of the transferable development rights may be substantially modified without amendment of the permit by the governing authority.

(a) Transferred development rights, not used on the property for which their receipt was authorized, cannot be severed or transferred without further action of the governing authority. After the issuance of a certificate of occupancy for all structures on the site plan approved as a part of the special permit, the development rights transferred to a property and not utilized in the manner described in the special permit may be severed or transferred from the receiving property by amendment of the special permit by the governing authority.

(b) Upon a written finding by the zoning administrator that the development of the receiving property in the manner provided by the amendment could or did occur without the use of all transferred development rights specified in the original special permit, the governing authority may, at the time of approval of an amendment to the special permit, provide that the amount of any transferred development rights not utilized, be severed from the receiving property. The governing authority shall make a finding as whether the development actually undertaken on the property has had no substantially adverse, environmental, economic or social impact that would not be present if the development had been completed as contemplated in the special permit and shall determine if the partial development of the property through the use of only some of the transferred development rights has allowed the development of structures which are at variance with the zoning district regulations such that the remaining property should be made available for development at the increased density allowed by the remaining transferred development rights.

(11) Expiration of Transferable Development Rights Special Permits;

If initial development of a property to which development rights have been transferred is not begun within twelve (12) months, or a certificate of occupancy issued for all structures on the site plan within twenty-four (24) months, after the issuance of the TDR special permit, the permit will automatically expire. The terms of a TDR special permit may extend these time limits but, any extensions not specifically stated must be approved by the governing authority. For the purposes of this section, the issuance of a building permit and construction activity with a cost of more than \$5,000 are considered to constitute initial development. If for a period of twelve (12) consecutive months, after the issuance of the first certificate of occupancy for the site, the property for which the receipt of development rights was permitted is used in a manner not specifically described in the permit, the special permit will automatically expire and conversion back to the use for which the special permit was issued will require renewal of the permit.

(a) A determination as to whether the "automatic expiration" of a permit has occurred shall be made by the zoning administrator, who shall notify the applicant of the decision in writing. The zoning administrator shall also notify the director of the bureau of buildings, that the permit has expired. The decision shall be reviewable in the same manner as other administrative decisions.

(b) Transferable development rights, which attached to a property prior to their expiration, cannot be revived for use on that same property except when authorized by a renewal of the special permit. If the application for the renewal of the special permit is denied prior to the initial development of any structures on the site, the development rights transferred to the property are severed without the need to show that the property would otherwise qualify as a sending property. As a part of any denial of the application for renewal at any other stage of development on the site prior to the issuance of the certificate of occupancy, the governing authority shall make a finding as whether the development actually undertaken on the property has had no substantially adverse, environmental, economic or social impact that would not be present if the development had been completed as contemplated in the special permit and shall determine if the partial development of the property through the use of only some of the transferred development rights has allowed the development of structures which are at variance with the zoning district regulations such that the remaining property should be made available for development at the increased density allowed by the remaining transferred development rights.

(c) No building permit for structures requiring the use of transferred development rights may be issued or allowed to remain in effect where the TDR special permit has expired.

Section 2: That Section 6-1007 of the Code of Ordinances be amended to add a new subsection to be codified as subsection (g) which shall read as follows:

(f) Applications to sever, transfer or receive development rights or to amend or renew such previously approved applications: \$400.00.

Section 3: That this ordinance shall become effective upon approval by the Mayor or by operation of law with such approval